

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

<b>In the Matter of</b>	)	
	)	
<b>New Part 4 of the Commission's Rules</b>	)	<b>ET Docket No. 04-35</b>
<b>Covering Disruptions to Communications</b>	)	

**To:   The Commission**

**JOINT REPLY COMMENTS OF**  
**SOUTHERN LINC AND SOUTHERN TELECOM**

Southern Communications Services, Inc. d/b/a Southern LINC ("Southern LINC") and Southern Telecom, Inc. ("Southern Telecom"), through their undersigned counsel, respectfully submit these Reply Comments in the above-captioned matter pursuant to Section 1.415 of the Federal Communications Commission's ("FCC") rules.

Although Southern LINC and Southern Telecom support an increase in network reliability and efforts to improve homeland security, they urge the FCC not to extend the existing mandatory service disruption reporting requirement to wireless or underlying infrastructure providers. If the FCC were to extend the mandatory reporting rules to such providers, however, Southern LINC and Southern Telecom ask the FCC to clarify the definition of "outage," adopt reporting thresholds better suited to wireless and wholesale infrastructure providers, modify the proposed reporting requirements for 911 calls, extend the timeframe for filing initial reports, reduce the amount of requested information, and protect the confidentiality of that information.

**I.     BACKGROUND**

Southern LINC and Southern Telecom have a vested interest in the outcome of this proceeding because of their regulatory status as providers of telecommunications services.

Southern LINC is a wholly owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a Commercial Mobile Radio Service ("CMRS") provider, Southern LINC operates a digital 800 MHz SMR system using Motorola's proprietary Integrated Digital Enhanced Network technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

Southern LINC provides these services to more than 275,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. Southern LINC offers the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Furthermore, Southern LINC serves many areas of Florida and Mississippi that are not served by any other advanced wireless dispatch provider.

Southern Telecom is also a wholly owned subsidiary of Southern Company. Founded in 1997, Southern Telecom provides long-haul and metro dark fiber connecting Atlanta with smaller cities throughout the southeast. Southern Telecom primarily offers wholesale dark fiber optic solutions to telecommunications providers, carrier's carriers, enterprise private networks, and enterprise data storage, back-up, and disaster recovery service providers.

## **II. THE FCC SHOULD NOT EXTEND MANDATORY REPORTING TO WIRELESS OR UNDERLYING INFRASTRUCTURE PROVIDERS**

Southern LINC and Southern Telecom oppose the extension of the mandatory service disruption reporting requirements to providers of wireless or underlying infrastructure services.

Although the FCC proposes to require outage reporting by all communications providers,<sup>1</sup> Southern LINC and Southern Telecom agree with numerous commenters that industry-sponsored voluntary reporting would provide all of the benefits of mandatory reporting without many of the burdens. For example, voluntary reporting would result in the submission of "accurate, useful, and complete" information, minimize administrative burdens by facilitating electronic reporting, and allow industry and governmental review of the outage data.<sup>2</sup>

Voluntary reporting would also confer several benefits that are unavailable through mandatory reporting. In particular, voluntary reporting would foster open cooperation and collaboration between carriers and governmental entities.<sup>3</sup> "A mandatory rules-based process, in contrast, creates a 'we-them' arrangement that introduces caution and suspicion into the regulator-industry relationship."<sup>4</sup> The voluntary reporting process would also encourage carriers to share their technical and operational expertise and develop innovative Best Practices.<sup>5</sup> If the FCC were to adopt mandatory reporting, however, ATIS warns that "the open exchange of information will be stifled, involvement by industry will likely diminish and the successful Best

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<sup>1</sup> In re New Part 4 of the Commission's Rules Concerning Disruptions to Communications, ET Docket No. 04-35, *Notice of Proposed Rulemaking*, 19 FCC Rcd 3373 ¶ 1, 14-17 (2004) [hereinafter *NPRM*].

<sup>2</sup> Compare *id.* ¶ 1, 7, 12 with e.g., Comments of CTIA – The Wireless Association, ET Docket No. 04-35, 6-8 (May 25, 2004) [hereinafter *CTIA Comments*], Comments of Qwest Communications International Inc., ET Docket No. 04-35, 1-4 (May 25, 2004) [hereinafter *Qwest Comments*], and Comments of the Alliance for Telecommunications Industry Solutions, ET Docket No. 04-35, 5-12 (May 25, 2004) [hereinafter *ATIS Comments*].

<sup>3</sup> E.g., Comments of T-Mobile, ET Docket No. 04-35, 11 (May 25, 2004) [hereinafter *T-Mobile Comments*], Comments of AT&T Corp., ET Docket No. 04-35, 7 (May 25, 2004) [hereinafter *AT&T Comments*].

<sup>4</sup> *T-Mobile Comments* at 11.

<sup>5</sup> *ATIS Comments* at 9-10; Comments of Verizon, ET Docket No. 04-35, 18 (May 25, 2004).

Practice development process will be jeopardized."<sup>6</sup> As discussed in greater detail below, Southern LINC and Southern Telecom believe that voluntary reporting is necessary to ensure the confidentiality of sensitive outage information. Southern LINC and Southern Telecom further note that voluntary reporting is more flexible than mandatory reporting, enabling the adaptation of the reporting standards to changing circumstances without the need for an expensive and time-consuming rulemaking proceeding.<sup>7</sup>

Finally, mandatory reporting is unnecessary for wireless providers. The competitive state of the wireless industry already compels providers to fix outages quickly and to "invest[] in their networks to increase capacity, quality, and reliability in order to attract and retain customers."<sup>8</sup> No regulatory mandate would enhance wireless providers' commitment to deliver reliable communications to their customers.

Thus, Southern LINC and Southern Telecom recommend allowing the industry enough time to develop and implement voluntary reporting before mandating the filing of outage reports by wireless or underlying infrastructure providers.

### **III. IF THE FCC WERE TO EXTEND THE MANDATORY REPORTING REQUIREMENT, IT SHOULD MODIFY THE PROPOSED RULES**

If the FCC were to extend the mandatory reporting rules to providers of wireless or underlying infrastructure services, Southern LINC and Southern Telecom request several modifications to the proposed rules.

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<sup>6</sup> *ATIS Comments* at 9-10.

<sup>7</sup> *E.g., CTIA Comments* at 7; Comments of Lucent Technologies, ET Docket No. 04-35, 3 (May 25, 2004); *AT&T Comments* at 7.

<sup>8</sup> *T-Mobile Comments* at 6; Comments of Sprint Corporation, ET Docket No. 04-35, 2-3 (May 25, 2004) [hereinafter *Sprint Comments*]; Comments of Cingular Wireless LLC, ET Docket No. 04-35, 6 (May 25, 2004) [hereinafter *Cingular Comments*].

**Definition of "Outage."** The FCC should clarify that the definition of "outage" refers only to the complete loss of communications. While the FCC proposes to define an "outage" as "[a] significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network,"<sup>9</sup> Southern LINC agrees with Verizon and SBC that the term "significant degradation" is too subjective and would lead to inconsistent outage reporting across the industry.<sup>10</sup>

The proposed definition is particularly inappropriate for carriers that provide voice and data communications over their systems, such as Southern LINC and Southern Telecom. Because voice and data communications require different amounts of capacity, the existence of a "significant disruption" would depend on a particular customer's operations at a given time.<sup>11</sup> Carriers do not possess this type of information. The definition should also exclude blocking and queuing during periods of high traffic, as well as scheduled maintenance and other planned outages.<sup>12</sup>

**Reporting Threshold.** The FCC should also reconsider the proposed reporting thresholds for providers of wireless or underlying infrastructure services. Southern LINC opposes the use of "potentially affected users" as the reporting threshold for wireless providers. While "the inherent mobility of wireless users makes it impossible to determine how many

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<sup>9</sup> *NPRM*, 19 FCC Rcd 3373 ¶ 20 n.50.

<sup>10</sup> *Verizon Comments* at 12; *Comments of SBC Communications*, ET Docket No. 04-35, 7 (May 25, 2004) [hereinafter *SBC Comments*].

<sup>11</sup> *Verizon Comments* at 12; *SBC Comments* at 7-8.

<sup>12</sup> *Cingular Comments* at 15; *CTIA Comments* at 13.

potential users may be affected by an outage,"<sup>13</sup> the concentration factor "would grossly overestimate the effect of any outage."<sup>14</sup> Some members of the wireless industry propose the use of historic loading data as a more appropriate reporting threshold for wireless providers.<sup>15</sup> Southern LINC recommends that the FCC reformulate its proposal and request further comment on the use of such a threshold.

Southern Telecom also objects to the use of "potentially affected users" as a threshold reporting requirement for underlying infrastructure providers. Specifically, the FCC should not require infrastructure providers to count their customers' end users for purposes of reporting outages. Southern Telecom provides wholesale infrastructure capacity to telecommunications carriers but has no information regarding the number of end users these customers may subsequently serve using that capacity. The use of this threshold would also duplicate the provision of this information.

**911 Outage Reporting.** In the *NPRM*, the FCC proposes to require wireless providers "to report any failure of a wireless network element that prevents an MSC from receiving, or responding to, 911 calls . . . for at least 30 minutes."<sup>16</sup>

Southern LINC agrees with Sprint, CTIA, and Nextel that the FCC should limit any such reporting obligations to elements within the wireless provider's control.<sup>17</sup> "[W]ireless carriers do not control the end-to-end elements of a 911 call and frequently have no visibility to outages that

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<sup>13</sup> *Cingular Comments* at 15; see *CTIA Comments* at 12; Comments of MCI, Inc., ET Docket No. 04-35, 5-6; *Sprint Comments* at 23.

<sup>14</sup> *CTIA Comments* at 12-13; see *Sprint Comments* at 24.

<sup>15</sup> *CTIA Comments* at 12; *Sprint Comments* at 24.

<sup>16</sup> *NPRM*, 19 FCC Rcd 3373 ¶ 40.

<sup>17</sup> *Sprint Comments* at 26; *CTIA Comments* at 14; Comments of Nextel Communications, Inc., ET Docket No. 04-35, 7-8 (May 25, 2004).

would impact call delivery."<sup>18</sup> Because wireless providers lack access to data from local exchange carrier and Public Safety Answering Point facilities, they could not monitor or report outage data without an "extensive reworking" of their systems.<sup>19</sup>

**120-Minute Filing Deadline.** Southern LINC and Southern Telecom agree with the majority of parties that 120 minutes is not enough time to file an initial outage report and could delay efforts to restore service. Southern LINC and Southern Telecom, like several other carriers, have limited personnel with the technical knowledge to diagnose an outage, remedy the situation, *and* file a report.<sup>20</sup> The FCC should also provide additional time for carriers to file these initial reports because early diagnoses of outages are often flawed or incomplete, limiting their usefulness to the FCC.<sup>21</sup>

**Requested Information.** Southern LINC and Southern Telecom ask the FCC to modify the proposed rules regarding the "fill-in-the-blank" template. Although Southern LINC and Southern Telecom support the electronic filing of outage reports, the proposed template requests too much detailed information. As T-Mobile notes, "much of this information will not be known within 120 minutes, and even when known, it would be physically impossible for a carrier to assemble and file all of the information within 120 minutes."<sup>22</sup> Thus, the FCC should reduce the amount of requested information to permit the timely restoration of service and avoid the filing of inaccurate information.

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<sup>18</sup> *Sprint Comments* at 26.

<sup>19</sup> *CTIA Comments* at 14.

<sup>20</sup> *E.g., Sprint Comments* at 26; *Verizon Comments* at 3; Comments of National Telecommunications Cooperative Association, ET Docket No. 04-35, 7 (May 25, 2004).

<sup>21</sup> *E.g., Cingular Comments* at 17-18; *Sprint Comments* at 26.

<sup>22</sup> *T-Mobile Comments* at 21; *see, e.g., SBC Comments* at 16; *CTIA Comments* at 15.

**Confidentiality.** The FCC should not make outage reports publicly available. The Department of Homeland Security ("DHS") warns that "[t]he potential availability of all reports . . . could provide a potential adversary with a virtual road map targeting network stress points and vulnerabilities and a field guide to defeating 'best practices' and protective measures."<sup>23</sup> The DHS further cautions that "[t]he Commission's apparent proposal to make the outage reports available to the public electronically over the Internet increases this risk exponentially."<sup>24</sup> Southern LINC and Southern Telecom agree with the DHS and other parties that the disclosure of this information would pose a grave threat to the nation's infrastructure.<sup>25</sup> Southern LINC and Southern Telecom also believe that the disclosure of this information could create unfair competitive advantages by allowing competitors to access confidential and proprietary information.<sup>26</sup>

Southern LINC and Southern Telecom agree with several parties that the public availability of this information would contradict recent legislative, executive, and regulatory pronouncements.<sup>27</sup> For example, the Critical Infrastructure Information Act protects *voluntarily* submitted critical infrastructure information from disclosure under the Freedom of Information Act but would not protect information filed pursuant to a *mandatory* outage reporting

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<sup>23</sup> Comments of the Department of Homeland Security, ET Docket No. 04-35, 14-15 (June 2, 2004).

<sup>24</sup> *Id.* at 15.

<sup>25</sup> *E.g.*, *Cingular Comments* at 9-11, 12-13; *T-Mobile Comments* at 17-19; *AT&T Comments* at 29-31.

<sup>26</sup> *E.g.*, *Cingular Comments* at 11-12; *Qwest Comments* at 24-26; *ATIS Comments* at 33.

<sup>27</sup> *E.g.*, *T-Mobile Comments* at 17-19; *AT&T Comments* at 29-31; *Cingular Comments* at 9-10.



requirement.<sup>28</sup> The FCC should not make outage data widely available at the same time that other governmental entities are attempting to cleanse their publicly accessible data of any sensitive information. The FCC should instead explore alternative means by which it could access outage data without adopting a mandatory reporting requirement, such as through voluntary reporting.

**WHEREFORE, THE PREMISES CONSIDERED,** Southern LINC and Southern Telecom respectfully request that the FCC consider these Reply Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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<sup>28</sup> Critical Infrastructure Information Act, P.L. 107-296, 116 Stat. 2135, §§ 211-215 (to be codified at 6 U.S.C. §§ 131-134) (2002).